IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1631 OF 2007

M/s.Lloyds Metals & Engg. Ltd. & Ors. ....Petitioners
V/s
IFCI Limited & Anr. ....Respondents.

Mr.A.P.Mundargi i/by Mr.Maraveer Wamorkar & Co. Adv. For the petitioners.

Mr.Deepak Thakkar i/by Pragna Thakkar & Co., Adv. For the respondent No.1.

Mr.A.S.Shitole, APP for the State.

CORAM: A.P.DESHPANDE, J.
19/11/07

PC:

The petitioners take exception to an order passed by the Sessions Judge dated 4.7.07 dismissing criminal revision application objecting to issuance of process in a complaint filed under section 138 of the Negotiable Instruments Act. Petitioner No.1 is a company and petitioner Nos.2 and 3 are its directors. It is a matter of record that the petitioners are indebted to respondent No.1 IFCI Limited which had advanced money to the petitioners for the purpose of their business. On 27.6.06 the petitioners issued six cheques in favour of the respondent financial institution drawn on Abu Dhabi Commercial Bank Limited. Three of the said cheques when presented for encashment were dishonoured as the petitioners had instructed the bank not to encash the said cheques.

On account of the dishonour of the cheques the respondent filed a complaint against the petitioners and as the Magistrate was prima facie satisfied that the complaint deserved consideration passed an order of issuance of process which is called in question by filing a revision. The impugned revisional order reveals the undisputed position which is summarized in para 16 of the order. Said facts are that the cheques were issued by the present petitioners in favour of the respondent. The respondent presented the cheques to the bank. The cheques were dishonoured. Demand notice was issued by the respondent calling upon the present petitioners to pay the amount and the present petitioners failed to comply with the demand. On the above set of undisputed facts the question is whether the Magistrate is justified in passing an order to summon the accused. The learned senior counsel for the petitioners has invited my attention to a communication dated 27.6.06 which is a letter addressed by the present petitioners to the respondent IFCI Ltd. According to the petitioners cheques were issued pursuant to the communication dated 27.6.06 and after referring to the relevant clauses in the said communication it is contended that the cheques were issued subject to the condition that the respondent if willing to accept other conditions spelt out in the communication should present the cheques. As the respondent did not accede to the request made by the petitioners and declined to accept restructuring proposal in its entirety the respondent could not have presented the cheques for encashment. The learned counsel has placed reliance on the provisions contained in section 46 of the

Negotiable Instruments Act which deals with the negotiation. Section 46 is relied upon to contend that the petitioner can always show that the instrument was delivered conditionally or for special purpose only and not for the purpose of transferring absolutely the property therein. Per contra the respondent has placed reliance on the express language used in section 138 and the presumption finding place in section 139 of the Negotiable Instruments Act. Learned counsel for the respondent has submitted that the payee or the holder of a cheque shall be deemed to have received the cheque of the nature referred to in section 138 for the discharge of the debt in whole or in part. No doubt presumption is rebuttable and at an appropriate stage it would be open for the petitioners to substantiate its case by rebutting the presumption. At the stage of issuance of summons to the accused the Magistrate is not expected to consider the niceties of defence based on the conditions contained in the communication dated 27.6.06 which according to the learned counsel for the petitioners constitute a conditional offer and as the cheques were tendered along with said communication the respondent could not have deposited the cheques with the bank. In my view, the revisional court has rightly held that the defence of the present petitioners cannot be properly considered at the initial stage when no evidence has been led by the parties. Perused the impugned order. Same does not suffer from any patent illegality requiring interference in exercise of writ jurisdiction. Hence writ petition is summarily dismissed.

19.11.07